

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7942 of 1998

to

SPECIAL CIVIL APPLICATION No 7954 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

UNION OF INDIA

Versus

RAMKRUPAL JAGANNATH

Appearance:

1. Special Civil Application No. 7942 of 1998
MR JC SHETH for Petitioners
MR KK SHAH for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 09/04/99

ORAL JUDGEMENT

1. All these petitioners were admitted by us on 8th October, 1998. On that day, Rule was issued and

ad-interim relief against implementation of the order of Central Administrative Tribunal was granted. Notice as to interim relief was made returnable on 1st December, 1998. The matter was, thereafter, adjourned from time to time.

2. Today, we have heard Mr. J.C. Sheth, learned counsel for the petitioner and Mr. K.K. Shah, learned counsel for the respondents. As ad-interim relief was granted and the said relief was against the order of reinstatement, in the facts and circumstances of the case and with the consent of the parties, we have heard the main matters.

3. All these petitions were filed against orders in O.A. No.69 of 1993 and companion matters passed by Central Administrative Tribunal, Ahmedabad Bench ("CAT" for short) on 16th July, 1998. Various applications came to be filed for getting reinstatement. All of them were disposed by a common order. It was the case of the authorities that the respondents had produced bogus service card before the railway authority and obtained service in the Railways on the basis of such bogus cards. A charge sheet was, therefore, issued in April 1998, inquiry was conducted wherein charges were proved. They were, thereafter, removed from service. The said action was challenged in the above O.As.

4. The Tribunal, by the impugned order, held that on careful consideration of submissions of both the sides, it was clear that the case of the railway administration was that the employees had got employment on the basis of service cards which were bogus. The Tribunal, however, stated; "It is not their claim that the applicants had forged or fabricated the cards". At another place also, the Tribunal observed: "The Railway's stand is that the service cards are not genuine and it is not their contention that the applicants had in any way forged or fabricated cards".

5. After recording the aforesaid finding, the Tribunal observed that in the facts and circumstances of the case the authorities should not be allowed to hold fresh inquiry. The Tribunal was conscious that, though in past, such orders were made (O.A. 202 of 1993) and the matter was remitted back but it was not disposed of even after long lapse of time. The Tribunal, therefore, concluded: "In the facts and circumstances we are inclined to agreed with the suggestion of Mr. K.K. Shah that at this distance of time it will not be worthwhile to remand the matter back to the enquiry officer".

Accordingly, the following order was made :-

"In the facts and circumstances of the case and following the decision of the Tribunal in O.A. 1329/90 we are of the view that it is not necessary to remand the case back to the enquiry officer and hold that the ends of justice will be met by setting aside the orders of disciplinary authority and the appellate authority as bad in law. We direct accordingly and further direct the respondents to reinstate the applicants as early as possible and in any case not later than eight weeks from the date of receipt of a copy of this order. We also hold that the applicants are not entitled to any back wages but the period from the date of removal of the applicants till the date they are reinstated shall count for the purpose of continuity in service for pension."

6. Mr. Sheth submitted that CAT has committed an error of law and jurisdiction in granting reinstatement. When a finding of fact was recorded by the authorities that the cards were bogus was not disturbed by CAT, it ought not to have granted reinstatement. In any case, Mr. Sheth submitted, it was incumbent on the part of CAT to remit back the case to Railway Authorities by directing them to hold proper inquiry in accordance with law and to pass appropriate orders complying with the principles of natural justice and fair play. To that extent, the order requires interference by this Court.

7. Mr. K.K. Shah, on the other hand, supported the order passed by CAT. He submitted that, in similar circumstances, reinstatement was granted. For that, he placed reliance on the order passed by CAT in O.A. No.202 of 1993, decided on 4th August, 1995. He also stated that, though in the above order, the matter was remanded by directing the authorities to decide in accordance with law, reinstatement was granted and the said order was not challenged by the Railway administration and the applicant was, in fact, reinstated. The said statement made in additional affidavit by the applicant was not disputed by the other side as Mr. Sheth states that he has no instructions and/or knowledge about the reinstatement of the applicant. Mr. Shah also stated that in O.A. No.329 of 1990, the matter was not remanded and the inquiry was closed. He stated that the said order was also not challenged.

8. Without expressing final opinion as to whether CAT has jurisdiction to pass such order or not to drop inquiry, in the facts and circumstances, in our opinion, such direction ought not to have been issued by CAT. Ordinarily, when an inquiry is held to be vitiated either because of non-compliance with statutory provisions or violation of principles of natural justice, the Appellate/Revisional authority or a competent Court in exercise of powers may set aside the order passed by the authorities. Normally, in such circumstances, the matter should be remanded to the authority and by affording reasonable opportunity of being heard, the matter should be allowed to be proceeded with from that stage.

9. No doubt, Mr. Shah submitted that, in the instant case, even the General Manager himself was of the opinion that it would not serve useful purpose inasmuch as it may not be possible to get relevant material, so that the charges levelled against the employees could be established. It would, therefore, be useless if the inquiry is allowed to be proceeded further. For that, our attention was invited to a communication addressed by the General Manager (P) to Deputy Chief Project Manager, RE/BRC dated 8th April, 1994. The said letter is directly not applicable to the facts of the case, inasmuch as, it was written by General Manager (P), Head Quarters Office, Central Organization, Railway Electrification, Allahabad. In our opinion, therefore, the authority must be given liberty to take appropriate decision taking into account all facts and circumstances, including as to whether requisite materials would be available or not. So far as the order passed by CAT for reinstatement is concerned, in the facts and circumstances, it is not disturbed.

10. For the foregoing reasons, in our opinion all the petitions deserve to be partly allowed. So far as reinstatement is concerned, the order is not disturbed and the direction is confirmed. The authorities will reinstate all the respondent-workmen on or before 30th June, 1999. So far as closing and dropping of inquiry is concerned, it would be open to the Railway administration to hold inquiry after following the requirements of law and observing the principles of natural justice, if the Railway administration so wishes. If such inquiry is proceeded with, it will be disposed of as expeditiously as possible, preferably before 31st December, 1999. The respondents-workmen would also co-operate with the said inquiry.

11. Petitions are, accordingly, partly allowed. Rule

is made absolute to that extent in each of the petitions.
In the facts and circumstances of the case no order as to
costs. Direct service permitted.

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